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DEPARTMENT OF THE TREASURY

17 CFR Part 420

[Docket No. Treas-DO-2014-0002]

Government Securities Act Regulations: Large Position Reporting Rules

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this notice of proposed rulemaking to solicit public comment on proposed amendments to Treasury's rules for reporting large positions in certain Treasury securities. The large position reporting rules are issued under the Government Securities Act (GSA) for the purposes of monitoring the impact in the Treasury securities market of concentrations of positions in Treasury securities and otherwise assisting the Securities and Exchange Commission (SEC) in enforcing the GSA. In addition, the large position reports provide Treasury with information to better understand supply and demand dynamics in certain Treasury securities. The proposed amendments are designed to improve the information available to Treasury and simplify the reporting process for many entities subject to the large position reporting rules.

DATES: Submit comments on or before August 9, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

Use the Federal eRulemaking Portal (www.regulations.gov) and follow the instructions for submitting comments through the website. You may download this proposed rule from www.regulations.gov or www.treasurydirect.gov.

Paper comments:

Send paper comments to Department of the Treasury, Bureau of the Fiscal Service, Government Securities Regulations Staff, 401 14th Street, S.W., Washington, D.C. 20227.

Please submit your comments using only one method, along with your full name and mailing address. We will post all comments to www.regulations.gov and on the TreasuryDirect website at www.treasurydirect.gov. The proposed rule and comments will also be available for public inspection and copying at the Treasury Department Library, Treasury Annex Room 1020, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. To visit the library, call (202) 622-0990 for an appointment. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Executive Director, or Kevin Hawkins, Government Securities Advisor, Department of the Treasury, Bureau of the Fiscal Service, Government Securities Regulations Staff, (202) 504-3632 or e-mail us at govsecreg@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION: Treasury is proposing amendments to the large position reporting (LPR) rules to improve the information reported so that Treasury can

better understand supply and demand dynamics in certain Treasury securities.

Specifically, the proposed amendments would: 1) request that central banks (including U.S. Federal Reserve Banks for their own account), foreign governments, and international monetary authorities voluntarily submit large position reports (Reports) when they meet or exceed the reporting threshold(s); 2) replace the current \$2 billion minimum reporting threshold with a percentage standard; 3) replace the concept of the “reportable position” with a requirement that defined reporting entities¹ must file a Report if any one of seven criteria is met; 4) revise the format for the reporting of positions in the specified Treasury security and establish a two-column format for the reporting of gross “obligations to receive” and gross “obligations to deliver;” 5) expand the components of a position to include futures, options on futures, and options; 6) provide an option for reporting entities to identify the type(s) of business engaged in by the reporting entity and any of its aggregating entities with positions in the specified Treasury security, and to identify their overall investment strategy with respect to positions in the specified Treasury security; and 7) consolidate relevant guidance in the LPR rules.

The proposed amendments to the LPR rules reflect Treasury’s continuing need to obtain relevant information from reporting entities while minimizing the cost and burden on those entities. We believe these amendments are consistent with the findings of Congress that “(1) the liquid and efficient operation of the government securities market is essential to facilitate government borrowing at the lowest possible cost to taxpayers; and (2) the fair and honest treatment of investors will strengthen the integrity and

¹ 17 CFR 420.2(i).

liquidity of the government securities market.”² In this proposed rule, we first provide background on the current LPR rules and then describe the proposed amendments to those rules.

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I. Background

A. Statutory Authority

² Pub. L. No. 103–202, 107 Stat. 2344 (1993) [15 U.S.C. 78o–5(f)].

In response to short squeezes in two-year Treasury notes that occurred in the government securities market in 1990-1991,³ Congress included a large position reporting provision in the 1993 amendments to the GSA.⁴ This provision grants Treasury the authority to prescribe rules requiring specified persons holding, maintaining, or controlling large positions in to-be-issued or recently-issued⁵ Treasury securities to file reports regarding such positions and to keep records when required by Treasury. The provision was intended to improve the collection of information by Treasury regarding large positions in Treasury securities held by market participants. Such information allows Treasury to monitor the impact of concentrations of positions in the Treasury securities market. This information is also made available to the Federal Reserve Bank of New York (FRBNY), as Treasury's agent, and the SEC.⁶ Treasury believes that large positions in Treasury securities are not inherently problematic and there is no presumption of manipulative or illegal intent merely because a reporting entity's position is large enough to be subject to Treasury's LPR rules.

The GSA specifically provides that Treasury shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. In particular, such information is exempted by the GSA from disclosure under the Freedom of Information Act.⁷

³ *Joint Report on the Government Securities Market*, Department of the Treasury, Securities and Exchange Commission, and Board of Governors of the Federal Reserve System (1992). See www.treasurydirect.gov. Market participants use the term "squeeze" to refer to a shortage of supply relative to demand for a particular security, as evidenced by a movement in its price to a level that is out of line with prices of comparable securities—either outright trading quotations or in financing arrangements.

⁴ See note 2, *supra*.

⁵ Treasury may request information on securities that fall outside of these timeframes if such "information is necessary and appropriate for monitoring the impact of concentrations of positions in Treasury securities." (See 17 CFR 420.2(g)(5)).

⁶ 15 U.S.C 78o-5(f)(1).

⁷ 15 U.S.C. 78o-5(f)(6).

B. Who is Subject to the Large Position Reporting Rules

Treasury's LPR rules apply to all persons and entities, foreign and domestic, that control a reportable position in a Treasury security, including: government securities brokers and dealers; registered investment companies; registered investment advisers; custodians, including depository institutions, that exercise investment discretion; hedge funds; pension funds; insurance companies; and foreign affiliates of U.S. entities.

The current rules provide an exemption for foreign central banks, foreign governments, and international monetary authorities (collectively, "foreign official organizations").⁸ U.S. Federal Reserve Banks are also exempt for the portion of any reportable position they control for their own account.⁹

C. Rulemaking

Treasury published final rules in 1996 that established recordkeeping and reporting requirements related to large positions in certain Treasury securities.¹⁰ The LPR rules were subsequently amended in 2002 to improve the collection of information in the Report by requiring more detailed reporting of certain components of the formula for determining a reportable position, adding a second memorandum item that requires the reporting of the gross par amount of "fails to deliver," and modifying the definition of "gross financing position" to eliminate the optional exclusion in the calculation of the amount of securities received through certain financing transactions.¹¹

II. Current Large Position Reporting Rules

A. Reporting and Recordkeeping Requirements

⁸ 17 CFR 420.1(b).

⁹ 17 CFR 420.1(c).

¹⁰ 61 FR 48338 (September 12, 1996).

¹¹ 67 FR 77412 (December 18, 2002).

1. On-Demand Reporting System

An “on-demand” reporting system, rather than a regular, ongoing system of reporting, provides Treasury with the information necessary to understand supply and demand dynamics in the Treasury securities market, while minimizing the potential impact on the market’s efficiency and liquidity and the cost to taxpayers of funding the federal debt. It also minimizes the cost and burden to those reporting entities affected by the LPR rules.

2. Notice Requesting Large Position Reports

Reports must be filed with FRBNY in response to a notice¹² from Treasury requesting large position information on a specific issue of a Treasury security. The Reports must be filed by defined reporting entities controlling positions that equal or exceed the reporting threshold specified in the notice. FRBNY must receive the Reports before noon Eastern time on the fourth business day after the issuance of the notice calling for large position information.

3. Control

Treasury defines “control” as the authority to “exercise investment discretion over the purchase, sale, retention, or financing of specific Treasury securities.”¹³ Investment discretion can be exercised by the beneficial owner, a custodian, or an investment adviser. The party responsible for making investment decisions, regardless of where securities are held, is the relevant reporting entity for large position reporting because the actions and objectives of the decision maker are what we are trying to determine.

¹² The notice is in the form of a Treasury press release that is posted to the Treasury and TreasuryDirect websites, subsequently published in the *Federal Register*, and also disseminated via social media, major news and financial publications, and wire services. An electronic mailing list that distributes the notice to subscribers is also available at www.treasurydirect.gov.

¹³ 17 CFR 420.2(b).

4. Components of a Position

Under the current rules, a “reportable position is the sum of the net trading positions, gross financing positions, and net fails positions in a specified issue of Treasury securities collectively controlled by a reporting entity.”¹⁴ Specific components of these positions are identified at § 420.2.¹⁵ All position amounts are currently required to be reported on a trade date basis at par value.

5. Recordkeeping

The recordkeeping requirements provide that any reporting entity controlling at least \$2 billion of a particular Treasury security must maintain and preserve certain records that enable it to compile, aggregate, and report large position information.¹⁶

B. Calls for Large Position Reports

Treasury has conducted 14 calls since the LPR rules became effective in 1996.¹⁷ We are proposing certain amendments to the rules based on the experience gained from these calls.

III. Proposed Amendments to the Large Position Reporting Rules

A. Balancing of Regulatory and Market Needs

Treasury has attempted to strike a balance between achieving the purposes and objectives of the GSA’s LPR requirements and minimizing costs and burdens on reporting entities. We believe that the amendments being proposed continue to achieve

¹⁴ 17 CFR 420.2(h).

¹⁵ See 17 CFR 420.2 for definitions of gross financing position, net fails position, and net trading position.

¹⁶ 17 CFR 420.4.

¹⁷ So that market participants remain knowledgeable about the LPR rules, specifically how to calculate and report a reportable position, Treasury “tests” the reporting system by requesting Reports annually, regardless of market conditions for a particular security. See 60 FR 65223 (December 18, 1995).

this balance by improving the type of information collected through the Reports while simplifying the reporting process for many reporting entities.

Treasury staff has also consulted staff of the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of New York in developing this proposal.

B. Section 420.1—Applicability

Treasury's LPR rules currently provide an exemption for foreign central banks, foreign governments, and international monetary authorities (collectively "foreign official organizations"). U.S. Federal Reserve Banks are also exempt for the portion of any reportable position they control for their own account. Foreign official organizations were exempted from the LPR rules issued in 1996 because they did not typically control large positions in Treasury securities and subjecting them to the reporting requirement would have presented legal and jurisdictional issues.¹⁸ Since that time, foreign official organizations have significantly increased their participation in the Treasury securities market and have an interest in a liquid and well-functioning Treasury securities market.

Treasury is therefore proposing to eliminate these exemptions and request that all foreign official organizations as well as U.S. Federal Reserve Banks for their own accounts voluntarily submit Reports if they meet or exceed the reporting threshold(s). Treasury believes that the voluntary submission of Reports by these entities is consistent with the purposes of the GSA and will help Treasury to better understand supply and demand dynamics in the Treasury securities market. This in turn will benefit these entities by helping the Treasury securities market to remain liquid and efficient. As is the

¹⁸ 61 FR 48342 (September 12, 1996).

case with all Reports, these voluntary Reports would be submitted only in response to a call for large position reports. Treasury requests for Reports are infrequent.¹⁹

C. Section 420.2—Definitions

1. Large Position Threshold

The current definition of “large position threshold”²⁰ contains references to the term “reportable position.” The proposed amendments to the LPR rules no longer include the concept of a reportable position, and therefore, Treasury is proposing to delete references to the term “reportable position” in the definition of “large position threshold.”

The current definition of “large position threshold” also establishes a minimum reporting threshold of \$2 billion. The GSA requires that the LPR rules specify “the minimum size of positions subject to reporting under this subsection, which shall be no less than the size that provides the potential for manipulation or control of the supply or price, or the cost of financing arrangements, of an issue or the portion thereof that is available for trading.”²¹

Treasury is proposing to replace the current \$2 billion minimum reporting threshold with a minimum threshold that is 10 percent of the outstanding amount of the specified Treasury security. Given the large range of issue sizes among various Treasury securities, making the minimum reporting threshold a percentage of the amount of the security outstanding may be a better indicator of concentrations of control. A percentage threshold will potentially allow for a threshold that is less than the current \$2 billion minimum. We will state the dollar amount of the reporting threshold(s) in the notice and

¹⁹ See note 17, *supra*.

²⁰ 17 CFR 420.2(d).

²¹ See note 2, *supra*.

press release announcing a call for Reports. Treasury is not proposing, however, to amend the \$2 billion threshold that triggers the LPR recordkeeping requirement.²²

2. Reporting Requirement

Under the current LPR rules, an entity must submit a Report if its reportable position meets or exceeds the large position threshold. The reportable position is the sum of the net trading, gross financing, and net fails positions. This calculation could result in a reportable position that falls below the large position threshold if an entity's net trading position is a large negative number.

Treasury proposes replacing the concept of the reportable position with a reporting requirement that entities must file a Report if any one of seven criteria is met.²³ For certain reporting criteria Treasury may announce different thresholds. For example, Treasury may have a different threshold for settlement fails than for other reporting criteria. Applying the large position threshold(s) to several different criteria may provide greater insight into gross exposures large enough to potentially impact the liquidity of the security, regardless of how the position was acquired. However, under no circumstances will a large position threshold be less than 10 percent of the amount outstanding of the specified Treasury security.

3. Tri-party Repurchase Agreement Shells

The proposed amendments introduce the term "tri-party repurchase agreement shell." A tri-party repurchase agreement (repo) shell is an account created on the books of a tri-party repo agent bank following confirmation of a tri-party repo transaction between a cash lender and a collateral provider. Each shell has a unique account number and an

²² 17 CFR 420.4(a)(1).

²³ See Appendix B to the proposed rule, "Sample Large Position Report," for the proposed criteria.

eligibility rule set based on an agreement between the cash lender and the collateral provider. The rule set defines the type of securities that are eligible for the shell as well as associated haircuts. Collateral is allocated and held for the duration of the transaction in the tri-party repo shell. The shell must be fully collateralized at all times and collateral providers may remove collateral from the shell only if shell-eligible collateral of equal value is allocated into the shell in its place.

D. Changes to the Large Position Report

1. Reporting Format

The current LPR rules require entities to calculate their total reportable position as of the close of business on the report date. Treasury is proposing a revised format for an entity to report its positions and settlement obligations in the specified Treasury security, including: 1) positions at the opening of the Federal Reserve System's Fedwire® Securities Service (Fedwire),²⁴ 2) settlement obligations created prior to and on the report date, and 3) positions at the close of Fedwire. The proposed reporting format would provide Treasury a better understanding of reporting entities' positions in the specified Treasury security leading up to the report date, their settlement obligations created prior to or on the report date, and their positions at the end of the report date.

2. Gross Reporting

Under the current rules, reporting entities are required to net obligations to receive and deliver in the net trading and net fails positions. For transactions between different reporting entities, Treasury is proposing using a two-column format for positions to be reported on a gross basis in order to separate settlement "obligations to receive" and

²⁴ The Federal Reserve System's Fedwire Securities Service is a book-entry securities transfer system that provides safekeeping, transfer, and delivery-versus-payment settlement services. The Fedwire Securities Service operates daily from 8:30 a.m. to 3:30 p.m. Eastern Time.

“obligations to deliver.” For example, settlement fails resulting from an obligation to receive would be reported separately from settlement fails resulting from an obligation to deliver. This format would potentially make it easier for Treasury to understand a reporting entity’s trading activity, including what positions it might control in the future. This approach may also be easier for many reporting entities to understand because it may align more closely with the way they typically maintain their records.

To avoid multiple counting, aggregating entities that are part of the same reporting entity would be required to net receive and deliver obligations resulting from intercompany transactions.

3. Futures and Options Contracts

Currently, the LPR rules only require the reporting of positions in futures contracts that require the delivery of the specified Treasury security. We are proposing to expand the components of a position to also include futures, options on futures, and options contracts for which the specified Treasury security is deliverable. The components would include contracts that require delivery of the specified Treasury security as well as contracts that allow for the delivery of several securities.

4. Components of a Position

As part of an ongoing effort to improve the information Treasury receives in response to a call for Reports, we routinely discuss ways to improve the LPR rules with market participants. Feedback from these discussions suggests that the current rules and formula could be modified to more closely align with the way reporting entities typically maintain their records and also may provide more meaningful information for Treasury.

Accordingly, we are proposing to replace the current components of a total reportable position with the following report components:

a. Positions in the Security Being Reported at the Opening of Fedwire on the Report Date, including positions:

- i. In accounts of the reporting entity;
- ii. In tri-party repurchase agreement shells;
- iii. As collateral or margin against financial derivatives and other contractual obligations of the reporting entity; and
- iv. Controlled by any other means.

b. Settlement Obligations Attributable to Purchase and Sale Contracts Negotiated Prior to and on the Report Date (excluding settlement fails), including:

- i. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for cash settlement (T+0);
- ii. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for regular settlement (T+1);
- iii. Obligations to receive or deliver, on the report date, the security being reported attributable to forward contracts, including when-issued contracts, for forward settlement (T+n, n>1);
- iv. Obligations to receive, on the report date, the security being reported attributable to Treasury auction awards; and

- v. Obligations to receive or deliver, on the report date, principal STRIPS²⁵ derived from the security being reported attributable to contracts for cash settlement, regular settlement, when-issued contracts, and forward contracts.
- c. Settlement Obligations Attributable to Delivery-versus-Payment Financing Contracts (including repurchase agreements and securities lending agreements) Negotiated Prior to and on the Report Date (excluding settlement fails), including:
 - i. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to overnight agreements;
 - ii. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to term agreements opened on, or due to close on, the report date;
 - iii. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to open agreements opened on, or due to close on, the report date.
- d. Settlement Fails from Days Prior to the Report Date (Legacy Obligations), including:
 - i. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on days prior to the report date.
- e. Settlement Fails as of the Close of Fedwire on the Report Date, including:

²⁵ STRIPS (Separate Trading of Registered Interest and Principal of Securities) means Treasury's program under which eligible securities are authorized to be separated into principal and interest components, and transferred separately. See 31 CFR 356.2.

- i. Obligations to receive or deliver, on the business day following the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on the report date.
- f. Positions in the Security Being Reported at the Close of Fedwire on the Report Date, including positions:
 - i. In accounts of the reporting entity;
 - ii. In tri-party repurchase agreement shells;
 - iii. As collateral or margin against financial derivatives and other contractual obligations of the reporting entity; and
 - iv. Controlled by any other means.
- g. Quantity of Continuing Delivery-versus-Payment Financing Contracts for the Security Being Reported, including the:
 - i. Net amount of security being reported lent out on term repurchase agreements that were opened before the report date and that were not due to close until after the report date, and on open repurchase agreements that were opened before the report date and that were not closed on the report date.
 - h. Futures and Options Contracts, including the:
 - i. Net long position, immediately prior to the opening of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable; and
 - ii. Net long position, immediately following the close of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable.

All amounts should be reported as positive numbers and at par in millions of dollars.

5. Optional Administrative Information

Treasury is providing an option for reporting entities to identify the type(s) of business engaged in by the reporting entity and its aggregating entities with respect to positions in the specified Treasury security by checking the appropriate box. The types of businesses listed in the proposed Report are: broker or dealer, government securities broker or dealer, municipal securities broker or dealer, futures commission merchant, bank holding company, non-bank holding company, bank, investment adviser, commodity pool operator, pension trustee, non-pension trustee, and insurance company. Reporting entities could identify as many business types as applicable. If the reporting entity is engaged in a business that is not listed, it could select “other” and provide a description of its business with regard to the specified Treasury security. Knowing the type(s) of business in which the reporting entity is engaged would help Treasury better understand the Treasury security positions included in the entity’s Report.

Treasury is also providing an option for reporting entities to identify their overall investment strategy with respect to positions in the specified Treasury security by checking the appropriate box. Active investment strategies would include those that involve purchasing, selling, borrowing, lending, and financing positions in the security prior to maturity. Passive investment strategies would include those that involve holding the security until maturity. A combination of active and passive strategies would involve applying the aforementioned active and passive strategies to all or a portion of a reporting entity’s positions in the security.

E. Consolidated Guidance

The current LPR rules specify the positions that entities are required to report, however, additional guidance on the treatment of specific transactions is contained in the preambles to the previous proposed and final rules and a list of Frequently Asked Questions and Answers available on the TreasuryDirect website. The proposed amendments consolidate certain guidance in the rules themselves, which may help to simplify the reporting process and make the reporting requirements clearer.

F. Request for Comment

Treasury welcomes comments on all of these proposed amendments, in particular whether: (1) the proposed amendments would accomplish the goal of providing Treasury with more useful information regarding supply and demand dynamics in certain Treasury securities; (2) the effect, if any, the proposed amendments would have on reporting entities in calculating their positions; (3) based on the proposed amendments, the current three and a half business day reporting timeframe would be sufficient to allow reporting entities to complete the proposed Report; (4) establishing a minimum LPR threshold that is 10 percent of the outstanding amount of the specified Treasury security is appropriate; (5) announcing different thresholds for certain reporting criteria is appropriate; (6) the proposed treatment of fails is appropriate; (7) including options in the positions that are required to be reported is appropriate or whether there are other amounts or positions that would be meaningful to include; (8) other business types of reporting entities should be identified on the report; and (9) \$2 billion is the appropriate threshold that triggers the LPR recordkeeping requirement. We invite comments on the effect of these proposed amendments, including any operational or system modifications that may be needed. We

also welcome comments on any other aspects of the proposed amendments and how to improve the LPR rules.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Act) requires that collections of information prescribed in the proposed amendments to the LPR rules be submitted to the Office of Management and Budget (OMB) for review and approval.²⁶ In accordance with that requirement, Treasury has submitted the collection of information contained in this notice of proposed rulemaking for review. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the collection of information may be submitted electronically to oir.submission@omb.eop.gov, or may be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, D.C., 20503; and to the Government Securities Regulations Staff, Bureau of the Fiscal Service, at the address specified at the beginning of this document.

The collection of information in the proposed amendments is contained in proposed § 420.3. The proposed amendments require a reporting entity that meets any one of seven criteria to submit a Report to FRBNY. Although we cannot be certain of the number of entities that would be required to report their positions as a result of a call for such Reports, we believe few reporting entities would actually have to file Reports because the minimum reporting threshold remains high. In fact, the actual reporting threshold(s) in a specific call for large position reports may exceed the minimum

²⁶ 44 U.S.C. 3507(d).

reporting threshold. Moreover, we expect that our requests for information will continue to be infrequent.

Treasury does not believe that reporting entities would find reporting the additional opening position information and separately reporting gross obligations to deliver and receive overly burdensome because this approach may align more closely with the way many reporting entities typically maintain their records. In addition, reporting entities must collect much of this information to calculate their reportable position under the current LPR rules. Because the proposed amendments would require more detailed information to be provided by entities that file reports, we are increasing the annual reporting burden in our submission to OMB by 104 hours, representing an increase from eight hours to ten hours per reporting entity and an increase from 12 to 20 reporting entities.

The collection of information is intended to enable the Treasury and other regulators to better understand supply and demand dynamics in certain Treasury securities. This information would help the Treasury securities market remain liquid and efficient and facilitate government borrowing at the lowest possible cost to taxpayers.

Treasury invites further comments on: (1) whether the proposed collection of information is necessary for the proper performance of Treasury's functions, including whether the information has practical utility; (2) the accuracy of Treasury's estimate of the burden; (3) enhancement of the quality, utility, and clarity of information to be collected; and (4) minimizing the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology.

Estimated total annual reporting burden: 200 hours.

Estimated annual number of respondents: 20.

Estimated annual frequency of response: 1.

V. Special Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The proposed amendments reflect Treasury's continuing interest in meeting its informational needs while minimizing the cost and burden on those entities affected by the regulations. The proposed amendments retain the on-demand reporting system, adopted in 1996, which is less burdensome than a regular reporting system. Based on the limited impact of the proposed amendments, it is our view that the proposed regulations are not a "significant regulatory action" for the purposes of Executive Order 12866.

In addition, we certify under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) that the proposed amendments to the current regulations would not have a significant economic impact on a substantial number of small entities. We believe that small entities will not control positions of 10 percent or greater in any particular Treasury security. The inapplicability of the proposed amendments to small entities indicates there is no significant impact. As a result, a regulatory flexibility analysis is not required.

List of Subjects in 17 CFR Part 420

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, we propose that 17 CFR part 420 be revised to read as follows:

PART 420—LARGE POSITION REPORTING

Sec.

420.1 Applicability.

420.2 Definitions.

420.3 Reporting.

420.4 Recordkeeping.

420.5 Effective date.

Appendix A to Part 420—Separate Reporting Entity.

Appendix B to Part 420—Sample Large Position Report.

Authority: 15 U.S.C. 78o–5(f).

§ 420.1 Applicability.

(a) This part is applicable to all persons that participate in the government securities market, including, but not limited to: government securities brokers and dealers, depository institutions that exercise investment discretion, registered investment companies, registered investment advisers, pension funds, hedge funds, and insurance companies that may control a position in a recently-issued marketable Treasury bill, note, or bond as those terms are defined in § 420.2.

(b) Notwithstanding paragraph (a) of this section, Treasury requests that central banks (including U.S. Federal Reserve Banks for their own account), foreign governments, and international monetary authorities voluntarily submit large position reports when they meet or exceed the reporting threshold(s).

§ 420.2 Definitions.

For the purposes of this part:

Aggregating entity means a single entity (e.g., a parent company, affiliate, or organizational component) that is combined with other entities, as specified in the definition of “reporting entity” of this section, to form a reporting entity. In those cases where an entity has no affiliates, the aggregating entity is the same as the reporting entity.

Control means having the authority to exercise investment discretion over the purchase, sale, retention, or financing of specific Treasury securities. Only one entity should be considered to have investment discretion over a particular position.

Large position threshold means the minimum dollar par amount of the specified Treasury security that a reporting entity must control in order for the entity to be required to submit a large position report. Treasury will announce the large position threshold(s), which may vary with each notice of request to report large position information and with each specified Treasury security. Treasury may announce different thresholds for certain reporting criteria. Under no circumstances will a large position threshold be less than 10 percent of the amount outstanding of the specified Treasury security.

Recently-issued means:

(1) With respect to Treasury securities that are issued quarterly or more frequently, the three most recent issues of the security.

(2) With respect to Treasury securities that are issued less frequently than quarterly, the two most recent issues of the security.

(3) With respect to a reopened security, the entire issue of a reopened security (older and newer portions) based on the date the new portion of the reopened security is issued by Treasury (or for when-issued securities, the scheduled issue date).

(4) For all Treasury securities, a security announced to be issued or auctioned but unissued (when-issued), starting from the date of the issuance announcement. The most recent issue of the security is the one most recently announced.

(5) Treasury security issues other than those specified in paragraphs (1) and (2) of this definition, provided that such large position information is necessary and appropriate for monitoring the impact of concentrations of positions in Treasury securities.

Reporting entity means any corporation, partnership, person, or other entity and its affiliates, as further provided herein. For the purposes of this definition, an affiliate is any: entity that is more than 50% owned, directly or indirectly, by the aggregating entity or by any other affiliate of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the aggregating entity; or entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the aggregating entity or any affiliate of the aggregating entity.

(1) Subject to the conditions prescribed in appendix A to this part, one aggregating entity, or a combination of aggregating entities, may be recognized as a separate reporting entity.

(2) Notwithstanding this definition, any persons or entities that intentionally act together with respect to the investing in, retention of, or financing of Treasury securities are considered, collectively, to be one reporting entity.

Reporting requirement means that an entity must file a large position report when it meets any one of seven criteria contained in appendix B to this part.

Tri-party repurchase agreement (repo) shell means an account created on the books of a tri-party repo agent bank following confirmation of a tri-party repo transaction between a cash lender and a collateral provider. Each shell has a unique account number and an eligibility rule set based on an agreement between the cash lender and the collateral provider. The rule set defines the type of securities that are eligible for the shell as well as associated haircuts. Collateral is allocated and held for the duration of the transaction in the tri-party repo shell. The shell must be fully collateralized at all times and collateral providers may remove collateral from the shell only if shell-eligible collateral of equal value is allocated into the shell in its place.

§ 420.3 Reporting.

(a) A reporting entity must file a large position report if it meets the reporting requirement as defined in § 420.2 of this part. Treasury will provide notice of the large position threshold(s) by issuing a press release and subsequently publishing the notice in the *FEDERAL REGISTER*. Such notice will identify the Treasury security issue to be reported (including, where applicable, identifying the related STRIPS principal component); the date or dates for which the large position information must be reported; and the applicable large position threshold(s) for that issue. A reporting entity is responsible for taking reasonable actions to be aware of such a notice.

(b) A reporting entity shall select one entity from among its aggregating entities (i.e., the designated filing entity) as the entity designated to compile and file a report on behalf of the reporting entity. The designated filing entity shall be responsible for filing any large position reports in response to a notice issued by Treasury and for maintaining the additional records prescribed in § 420.4.

(c)(1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity that controls an amount of the specified Treasury security that equals or exceeds one of the specified large position thresholds stated in the notice shall compile and report the amounts of the reporting entity's positions in the order specified, as follows:

(i) *Part I. Positions in the Security Being Reported at the Opening of Fedwire®* on the Report Date, including positions:

- (A) In accounts of the reporting entity;
- (B) In tri-party repurchase agreement shells;
- (C) As collateral or margin against financial derivatives and other contractual obligations of the reporting entity; and
- (D) Controlled by any other means.

(ii) *Part II. Settlement Obligations Attributable to Purchase and Sale Contracts* Negotiated Prior to and on the Report Date (excluding settlement fails), including:

- (A) Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for cash settlement (T+0);
- (B) Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for regular settlement (T+1);

(C) Obligations to receive or deliver, on the report date, the security being reported attributable to forward contracts, including when-issued contracts, for forward settlement ($T+n$, $n>1$);

(D) Obligations to receive, on the report date, the security being reported attributable to Treasury auction awards; and

(E) Obligations to receive or deliver, on the report date, principal STRIPS derived from the security being reported attributable to contracts for cash settlement, regular settlement, when-issued contracts, and forward contracts.

(iii) *Part III. Settlement Obligations Attributable to Delivery-versus-Payment Financing Contracts (including repurchase agreements and securities lending agreements) Negotiated Prior to and on the Report Date (excluding settlement fails), including:*

(A) Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to overnight agreements;

(B) Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to term agreements opened on, or due to close on, the report date; and

(C) Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to open agreements opened on, or due to close on, the report date.

(iv) *Part IV. Settlement Fails from Days Prior to the Report Date (Legacy Obligations), including obligations to receive or deliver, on the report date, the security*

being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on days prior to the report date.

(v) *Part V.* Settlement Fails as of the Close of Fedwire on the Report Date, including obligations to receive or deliver, on the business day following the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on the report date.

(vi) *Part VI.* Positions in the Security Being Reported at the Close of Fedwire on the Report Date, including:

(A) In accounts of the reporting entity;

(B) In tri-party repurchase agreement shells;

(C) As collateral or margin against financial derivatives and other contractual obligations of the reporting entity; and

(D) Controlled by any other means.

(vii) *Part VII.* Quantity of Continuing Delivery-versus-Payment Financing Contracts for the Security Being Reported, including net amount of security being reported lent out on term repurchase agreements that were opened before the report date and that were not due to close until after the report date, and on open repurchase agreements that were opened before the report date and that were not closed on the report date.

(viii) *Part VIII.* Futures and Options Contracts, including:

(A) Net long position, immediately prior to the opening of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable; and

(B) Net long position, immediately following the close of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable.

(2) An illustration of a sample report is contained in Appendix B.

(3) Each of the components of Part I – Part VIII shall be reported as a positive number or zero. All reportable amounts should be reported in the order specified above and at par in millions of dollars.

(4) Each submitted large position report must include the following administrative information: name of the reporting entity; address of the principal place of business; name and address of the designated filing entity; the Treasury security that is being reported; the CUSIP number for the security being reported; the report date or dates for which information is being reported; the date the report was submitted; name and telephone number of the person to contact regarding information reported; and name and position of the authorized individual submitting this report.

Reporting entities have the option to identify the type(s) of business engaged in by the reporting entity and its aggregating entities with positions in the specified Treasury security by checking the appropriate box. The types of businesses include: broker or dealer, government securities broker or dealer, municipal securities broker or dealer, futures commission merchant, bank holding company, non-bank holding company, bank, investment adviser, commodity pool operator, pension trustee, non-pension trustee, and insurance company. Reporting entities may select as many business types as applicable. If the reporting entity is engaged in a business that is not listed, it could select “other” and

provide a description of its business with respect to positions in the specified Treasury security.

Reporting entities also have the option to identify their overall investment strategy with respect to positions in the specified Treasury security by checking the appropriate box. Active investment strategies include those that involve purchasing, selling, borrowing, lending, and financing positions in the security prior to maturity. Passive investment strategies include those that involve holding the security until maturity. A combination of active and passive strategies would involve applying the aforementioned active and passive strategies to all or a portion of a reporting entity's positions in the specified Treasury security. Reporting entities may select the most applicable investment strategy.

(5) The large position report must be signed by one of the following: the chief compliance officer; chief legal officer; chief financial officer; chief operating officer; chief executive officer; or managing partner or equivalent. The designated filing entity must also include in the report, immediately preceding the signature, a statement of certification as follows:

By signing below, I certify that the information contained in this report with regard to the designated filing entity is accurate and complete. Further, after reasonable inquiry and to the best of my knowledge and belief, I certify that: (i) the information contained in this report with regard to any other aggregating entities is accurate and complete; and (ii) the reporting entity, including all aggregating entities, is in compliance with the requirements of 17 CFR part 420.

(6) The report must be filed before noon Eastern time on the fourth business day following issuance of the press release.

(d) A report to be filed pursuant to paragraph (c) of this section will be considered filed when received by the Federal Reserve Bank of New York. The report may be filed by facsimile or delivered hard copy. The Federal Reserve Bank of New York may in its discretion also authorize additional means of reporting.

(e) A reporting entity that has filed a report pursuant to paragraph (c) of this section shall, at the request of Treasury or the Federal Reserve Bank of New York, timely provide any supplemental information pertaining to such report.

(Approved by the Office of Management and Budget under control number 1535–0089)

§ 420.4 Recordkeeping.

(a) *Recordkeeping responsibility of aggregating entities.* Notwithstanding the provisions of paragraphs (b) and (c) of this section, an aggregating entity that controls a portion of its reporting entity's position in a recently-issued Treasury security, when such position of the reporting entity equals or exceeds \$2 billion, shall be responsible for making and maintaining the records prescribed in this section.

(b) *Records to be made and preserved by entities that are subject to the recordkeeping provisions of the SEC, Treasury, or the appropriate regulatory agencies for financial institutions.* As an aggregating entity, compliance by a registered broker or dealer, registered government securities broker or dealer, noticed financial institution, depository institution that exercises investment discretion, registered investment adviser, or registered investment company with the applicable recordkeeping provisions of the SEC, Treasury, or the appropriate regulatory agencies for financial institutions shall constitute compliance with this section, provided that, if such entity is also the designated filing entity, it:

(1) Makes and keeps copies of all large position reports filed pursuant to this part;

(2) Makes and keeps supporting documents or schedules used to compute data for the large position reports filed pursuant to this part, including any certifications or schedules it receives from aggregating entities pertaining to their holdings of the reporting entity's position;

(3) Makes and keeps a chart showing the organizational entities that are aggregated (if applicable) in determining the reporting entity's position; and

(4) With respect to recordkeeping preservation requirements that contain more than one retention period, preserves records required by paragraphs (b)(1) through (3) of this section for the longest record retention period of applicable recordkeeping provisions.

(c) *Records to be made and preserved by other entities.* (1) An aggregating entity that is not subject to the provisions of paragraph (b) of this section shall make and preserve a journal, blotter, or other record of original entry containing an itemized record of all transactions that contribute to a reporting entity's position, including information showing the account for which such transactions were effected and the following information pertaining to the identification of each instrument: the type of security, the par amount, the CUSIP number, the trade date, the maturity date, the type of transaction (e.g., a reverse repurchase agreement), and the name or other designation of the person from whom sold or purchased.

(2) If such aggregating entity is also the designated filing entity, then in addition it shall make and preserve the following records:

- (i) Copies of all large position reports filed pursuant to this part;
 - (ii) Supporting documents or schedules used to compute data for the large position reports filed pursuant to this part, including any certifications or schedules it receives from aggregating entities pertaining to their holdings of the reporting entity's position; and
 - (iii) A chart showing the organizational entities that are aggregated (if applicable) in determining the reporting entity's position.
- (3) With respect to the records required by paragraphs (c) (1) and (2) of this section, each such aggregating entity shall preserve such records for a period of not less than six years, the first two years in an easily accessible place. If an aggregating entity maintains its records at a location other than its principal place of business, the aggregating entity must maintain an index that states the location of the records, and such index must be easily accessible at all times.

(Approved by the Office of Management and Budget under control number 1535-0089)

§ 420.5 Applicability date.

The provisions of this part shall be first applicable beginning March 31, 1997.

Appendix A to Part 420—Separate Reporting Entity.

Subject to the following conditions, one or more aggregating entity(ies) (e.g., parent, subsidiary, or organizational component) in a reporting entity, either separately or together with one or more other aggregating entity(ies), may be recognized as a separate reporting entity. All of the following conditions must be met for such entity(ies) to qualify for recognition as a separate reporting entity:

(1) Such entity(ies) must be prohibited by law or regulation from exchanging, or must have established written internal procedures designed to prevent the exchange of information related to transactions in Treasury securities with any other aggregating entity;

(2) Such entity(ies) must not be created for the purpose of circumventing these large position reporting rules;

(3) Decisions related to the purchase, sale or retention of Treasury securities must be made by employees of such entity(ies). Employees of such entity(ies) who make decisions to purchase or dispose of Treasury securities must not perform the same function for other aggregating entities; and

(4) The records of such entity(ies) related to the ownership, financing, purchase and sale of Treasury securities must be maintained by such entity(ies). Those records must be identifiable—separate and apart from similar records for other aggregating entities.

To obtain recognition as a separate reporting entity, each aggregating entity or group of aggregating entities must request such recognition from Treasury pursuant to the procedures outlined in § 400.2(c) of this chapter. Such request must provide a description of the entity or group and its position within the reporting entity, and provide the following certification:

[Name of the entity(ies)] hereby certifies that to the best of its knowledge and belief it meets the conditions for a separate reporting entity as described in Appendix A to 17 CFR Part 420. The above named entity also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the entity or group of entities from:

(1) Exchanging any of the following information with any other aggregating entity (a) positions that it holds or plans to trade in a Treasury security; (b) investment strategies that it plans to follow regarding Treasury securities; and (c) financing strategies that it plans to follow regarding Treasury securities, or

(2) In any way intentionally acting together with any other aggregating entity with respect to the purchase, sale, retention or financing of Treasury securities.

The above-named entity agrees that it will promptly notify Treasury in writing when any of the information provided to obtain separate reporting entity status changes or when this certification is no longer valid.

Any entity, including any organizational component thereof, that previously has received recognition as a separate bidder in Treasury auctions from Treasury pursuant to 31 CFR part 356 is also recognized as a separate reporting entity without the need to request such status, provided such entity continues to be in compliance with the conditions set forth in appendix A to 31 CFR part 356.

Appendix B to Part 420 – Sample Large Position Report

Formula for Determining Whether to Submit a Large Position Report (millions of dollars at par value)

	<u>Column A</u>	<u>Column B</u>
	<u>Quantity</u>	
Part I. Positions in the Security Being Reported at the Opening of Fedwire® on the Report Date		
1. In accounts of the reporting entity	_____	
2. In tri-party repurchase agreement shells	_____	
3. As collateral or margin against financial derivatives and other contractual obligations of the reporting entity	_____	
4. Controlled by any other means	_____	
Part II. Settlement Obligations Attributable to Purchase and Sale Contracts Negotiated Prior to and on the Report Date (excluding settlement fails)	<u>Obligations to receive</u>	<u>Obligations to deliver</u>
5. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for cash settlement (T+0)	_____	_____
6. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for regular settlement (T+1)	_____	_____
7. Obligations to receive or deliver, on the report date, the security being reported attributable to forward contracts, including when-issued contracts, for forward settlement (T+n, n>1)	_____	_____

8. Obligations to receive, on the report date, the security being reported attributable to Treasury auction awards		
9. Obligations to receive or deliver, on the report date, principal STRIPS derived from the security being reported attributable to contracts for cash settlement, regular settlement, when-issued contracts, and forward contracts		
Part III. Settlement Obligations Attributable to Delivery-versus-Payment Financing Contracts (including repurchase agreements and securities lending agreements) Negotiated Prior to and on the Report Date (excluding settlement fails)	Obligations to receive	Obligations to deliver
10. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to overnight agreements		
11. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to term agreements opened on, or due to close on, the report date		
12. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to open agreements opened on, or due to close on, the report date		
Part IV. Settlement Fails from Days Prior to the Report Date (Legacy Obligations)		
13. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on days prior to the report date		

Part V. Settlement Fails as of the Close of Fedwire on the Report Date

14. Obligations to receive or deliver, on the business day following the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on the report date

Part VI. Positions in the Security Being Reported at the Close of Fedwire on the Report Date

Quantity

15. In accounts of the reporting entity

16. In tri-party repurchase agreement shells

17. As collateral or margin against financial derivatives and other contractual obligations of the reporting entity

18. Controlled by any other means

Part VII. Quantity of Continuing Delivery-versus-Payment Financing Contracts for the Security Being Reported

Quantity

19. Net amount of security being reported lent out on term repurchase agreements that were opened before the report date and that were not due to close until after the report date, and on open repurchase agreements that were opened before the report date and that were not closed on the report date

Part VIII. Futures and Options Contracts

20. Net long position, immediately prior to the opening of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable _____
21. Net long position, immediately following the close of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable _____

A reporting entity must submit a large position report if it meets any one of the following criteria:

- ☐ A. If the sum of column A in lines 1, 2, 3, 4, and 19 is greater than or equal to the announced large position threshold.
- ☐ B. If the sum of column A in lines 15, 16, 17, 18 and 19 is greater than or equal to the announced large position threshold.
- ☐ C. If the sum of column A in lines 5 through 13 is greater than or equal to the announced large position threshold.
- ☐ D. If the sum of column B in lines 5 through 13 is greater than or equal to the announced large position threshold.
- ☐ E. If column A in line 14 is greater than or equal to the announced large position threshold.
- ☐ F. If column B in line 14 is greater than or equal to the announced large position threshold.
- ☐ G. If line 20 or line 21 is greater than or equal to the announced large position threshold.

Please specify which of the above criteria triggered the reporting requirement (check all that apply).

Administrative Information to be Provided in the Report

- Name of Reporting Entity:
- Address of Principal Place of Business:
- Name and Address of the Designated Filing Entity:
- Treasury Security Reported on:
- CUSIP Number:
- Date or Dates for which Information is Being Reported:
- Date Report Submitted:
- Name and Telephone Number of Person to Contact Regarding Information Reported:

Name and Position of Authorized Individual Submitting this Report (Chief Compliance Officer; Chief Legal Officer; Chief Financial Officer; Chief Operating Officer; Chief Executive Officer; or Managing Partner or Equivalent of the Designated Filing Entity Authorized to Sign Such Report on Behalf of the Entity):

(Optional) Identify the business(es) engaged in by the reporting entity and any of its aggregating entities with respect to the specified Treasury security (check all that apply).

- | | | |
|--|--|---|
| <input type="checkbox"/> A. Broker or Dealer | <input type="checkbox"/> E. Bank Holding Company | <input type="checkbox"/> J. Pension Trustee |
| <input type="checkbox"/> B. Government Securities Broker or Dealer | <input type="checkbox"/> F. Non-Bank Holding Company | <input type="checkbox"/> K. Non-Pension Trustee |
| <input type="checkbox"/> C. Municipal Securities Broker or Dealer | <input type="checkbox"/> G. Bank | <input type="checkbox"/> L. Insurance Company |
| <input type="checkbox"/> D. Futures Commission Merchant | <input type="checkbox"/> H. Investment Adviser | <input type="checkbox"/> M. Other (specify) _____ |
| | <input type="checkbox"/> I. Commodity Pool Operator | |

(Optional) Do you consider the reporting entity's overall investment strategy with respect to the specified Treasury security to be:

- ☐ Active
- ☐ Passive
- ☐ Combination of Active and Passive

Statement of Certification: “By signing below, I certify that the information contained in this report with regard to the designated filing entity is accurate and complete. Further, after reasonable inquiry and to the best of my knowledge and belief, I certify that: (i) the information contained in this report with regard to any other aggregating entities is accurate and complete; and (ii) the reporting entity, including all aggregating entities, is in compliance with the requirements of 17 CFR Part 420.”

Signature of Authorized Person Named Above:

Matthew S. Rutherford,

Assistant Secretary for Financial Markets.

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